Statement of

Gerald B. Helman
Vice President, International and Governmental Affairs

Ellipso, Inc.

Before the

Subcommittee on Communications
Committee on Commerce, Science and Transportation

United States Senate

September 10, 1998

Executive Summary

When allowed to compete on a level playing field and enter the marketplace on equal footing, U.S. entrepreneurial energies and leadership will offer the world access to quality and innovative telecommunications services. This will further secure for the U.S. a leadership role in the growing global telecommunications sector.

Market access and its timing is essential in today's competitive marketplace. U.S. commercial satellite communications companies require access to global markets, many of which are now guarded by monopoly interests that have failed to provide the great potential of worldwide global satellite communications. These companies are forced to compete in a market which provides incentives to keep out competitors to Intelsat and Inmarsat.

Existing WTO dispute settlement procedures and FCC policies for licensing do not provide an effective remedy to commercial satellite companies competing in a time-sensitive environment. Only the complete separation of the investment status and the regulatory functions of the signatories of Intelsat and Inmarsat and the full privatization of these organizations and their affiliated spin-offs will break the motivation that exists to keep out competitors.

Monopoly interests must not be relied upon to reform themselves or voluntarily give up gatekeeping privileges. Meaningful legislation must create a direct pathway to privatization with time-lines, consequences for inaction and definitions for affiliate independence and privatization. Congress should determine the course and test for privatization.

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It is a great privilege for me to appear before you today to express my views on S. 2365, the International Satellite Communications Reform Act of 1998, and to contribute to your efforts to create an effective and appropriate pathway for the privatization of Intelsat, Inmarsat and their affiliates.

I speak to you today as Vice President for International and Governmental Affairs for Ellipso, Inc., a small start-up company that holds a license from the FCC to build a global voice and data telecommunications system based on satellites in sub-geostationary orbits. Ellipso is very much in the American tradition of the small business that is motivated to build a better mousetrap and is not discouraged by the ordinary marketplace challenges that all such commercial enterprises must be willing to overcome.

I hope to impress upon you today that U.S. entrepreneurial energies, when allowed to

compete on a level playing field and enter the marketplace on equal footing, will offer the world access to quality and innovative telecommunications services, further securing for the U.S. a deserved leadership role in this growing global industry sector. Commercial satellite systems like Ellipso require access to worldwide markets in order to recover the significant costs of construction, deployment and operation. By the same token, these systems by their very nature make it possible to serve on a non-discriminatory basis populations and geographical areas currently underserved or not served.

The Ellipso system will provide high-quality, low-cost mobile and fixed telephone service worldwide. The Ellipso system will also provide digital data transfer, faxing, paging, voice mail, messaging and geopositioning services. In anticipation of growing worldwide demand for these services, Ellipso has recently filed for a license in the newly opened 2 GHz band for mobile satellite services.

Equal and timely access to markets is essential to a fast developing, technology-driven marketplace.

Market access and its timing is essential in today's competitive marketplace. The story of Ellipso reveals this truth all too well. Although Ellipso was the first applicant in 1991 for the construction and deployment of the Big LEO systems now licensed by the FCC, market entry barriers erected by the FCC towards small company applicants postponed its licensing award two and one-half years behind the large company applicants. The FCC in this instance imposed strict financial standards as a precondition for licensure that effectively precluded the small company applicants from accessing the financial markets for capital required to develop, construct and deploy a global satellite system. This access to capital was essential to all applicants, large and small.

The application of these standards in fact created a two-tiered system, one for large corporations which had only to present a balance sheet with no commitment to draw on those

assets, and another for small companies, such as Ellipso, which were required to secure fully negotiated, irrevocable funding for the entire space segment. The result was that large corporations were enabled to go to the financial marketplace with license in hand to secure the necessary capital commitments while small corporations were required to go to that same marketplace, seeking the same financial commitments, without the benefit of a license.

I am sure everyone on the dias will agree that this created an environment that abuses one's sense of competitive fairness and equal treatment by a regulatory body. It took Ellipso over two and one-half years, until July 1997, to overcome this barrier and while our system has since been endorsed in the marketplace through equity investments by industry leaders like The Boeing Company, Ellipso is still battling against the time lost.

U.S. companies require access to global markets, many of which are now guarded by monopoly interests who have failed to provide the great potential of worldwide global satellite communications.

Mr Chairman, you will recall that you and other colleagues here in the Senate supported the efforts of small companies like Ellipso to overcome those discriminatory policies imposed by the FCC. Our concern at that time with financial standards that discriminated against new entrants is essentially the same as our concern today with the issue of monopoly-guarded overseas markets. New entrants, in this case small and large U.S. licensed satellite communications companies seeking access to markets essential to the viability of global satellite systems, are today forced to compete in a market which provides an incentive to keep out competitors to Intelsat and Inmarsat. The signatories to Intelsat and Inmarsat in many cases are the owners and gatekeepers of the playing field. These gatekeepers have every incentive to prevent the entry of competitors into their jurisdictions. This creates a closed environment which even effects companies like Ellipso which are not large competitors with Intelsat and Inmarsat.

U.S. companies offer truly worldwide global communications and connectivity of a kind not envisioned when Intelsat and Inmarsat were conceived. Companies like Ellipso are poised to build worldwide global communications systems that truly link all corners of the world. New entrants like Ellipso will offer high-quality, low-cost service, challenging monopoly rates and revealing the failure of the current system to provide the unempowered telecommunications consumer access to telecommunications capabilities.

In the words of Congressman Ed Markey, ranking member of the House telecommunications subcommittee and sponsor, along with Congressman Tom Bliley, chairman of the House commerce committee, Intelsat has very effectively allowed those who can afford service in Nairobi to call others who can afford service in Bombay. This is insightful because services like those offered by Ellipso will enable countries to provide affordable services to large population groups heretofore not served. Intelsat and Inmarsat have not addressed these issues. The current monopoly-driven system does not provide access for an individual in a small village located in a country of Sub-Saharan Africa to talk to another individual in a small village in the same or neighboring country. Nor does it effectively provide the small U.S. business seeking opportunities with partners in such remote and underserved parts of the world. That is why I emphasize the worldwide aspect of a global satellite system that is informed by the marketplace. Given the opportunity to access markets with underserved populations, Ellipso can provide communications services in areas not currently linked to the outside world.

Existing dispute settlement procedures and licensing policies do not effectively open overseas markets to U.S. interests.

I served as the former U.S. Ambassador to the United Nations in Geneva where I dealt with many international organizations. I later served as member of the Commission which restructured the ITU to make it a more useful forum for the private sector. I also served in 1992 as deputy head of the U.S. delegation to the WARC which allocated global spectrum for the new

and innovative Big LEO systems. It is my strong conviction that guidance by Congress in the form of legislation is not only useful but essential to the goal of privatization of Intelsat and Inmarsat in such a way that the incentives of signatories to prevent competitive services in their markets are eliminated.

The WTO dispute settlement procedure is an important remedy, but not all countries are WTO members. While the WTO provides a very important forum for addressing disputes, its dispute settlement procedures cannot be employed to address the time-sensitive access needs of individual companies. These procedures are, however, by their nature time consuming and as semi-judicial proceedings, they provide little consolation to companies seeking to maintain momentum in the marketplace. Furthermore, private companies have no status in the forum; instead, a company must first validate its concerns with the U.S. government which will approach a party to the WTO to begin discussions. Only after these have been exhausted will the U.S. determine the necessity to take the dispute to the WTO.

Reliance on language which would guide the FCC's response to applications by non-U.S. licensed entities to provide communications services in the U.S. market is also not an adequate remedy. The leverage afforded by the FCC's regulatory authority is useful but insufficient for purposes of global market access for companies like Ellipso. Commercial interests need market entry whether a particular country is interested in the U.S. market or not or whether it is a WTO signatory or not. This approach does not address and does not provide leverage against overseas markets closed to U.S. satellite companies. Nor is reliance on granting an application to an applicant only if that applicant is subject to the same rules and requirements as other entities providing the same or similar services sufficient to pry open recalcitrant markets. In the case of the global satellite systems like Ellipso that will seek to develop markets in developing countries, it is unlikely that applications from many of these countries will trigger such a review. Yet these countries are the parties to Intelsat and Inmarsat that have been most reluctant to privatize. A number of these countries are not WTO members. Only a complete separation of the investment status and the regulatory functions of the Intelsat and Inmarsat signatories and full privatization of

Intelsat and Inmarsat will break the motivation that currently exists within these organizations to keep out competition.

Legislation is needed to impose appropriate time-lines, incentives and criteria for privatization efforts.

The U.S. policy of open markets and transparent regimes should be bolstered by Congressional action advancing privatization at an acceptable pace and strengthening the U.S. negotiating position with Intelsat and Inmarsat parties. I am on record as supporting H.R. 1872, the House-passed Communications Satellite Competition and Privatization Act of 1997. That legislation contains time-lines for privatization and consequences for inaction or failure to achieve true privatization. At the same time, I recognize that there is no single approach to the privatization of Intelsat, Inmarsat and their affiliates. However, I strongly believe that if the U.S. Congress acts, it should act in a bold, unambiguous manner that complements the leadership role that industry and U.S. negotiators have taken over the past decade in the international arena. Congressional action should address head on the divestiture of monopoly interests in Intelsat and Inmarsat. If Congress acts, I believe that the message that such a strong stance sends to the international community will be as important as the actual mechanisms for privatization and competition. Anything short of this will risk undermining the work towards open markets to date. I do not believe that this will undermine efforts to reform these organizations from within. This process has proven too slow and ineffective.

I applaud the inclusion of specific findings in Section 3 of S. 2365 that will inform our negotiators, our trade partners, and the parties to Intelsat and Inmarsat. Specifically, it is appropriate to recognize that: 1) the warehousing by any party of a scarce satellite orbital locations and limits spectrum constitutes a barrier to competitive entry by new providers of satellite communications services; and 2) private commercial satellite communications systems are increasingly offering the latest telecommunications services to more and more countries of the

world with declining costs, making satellite communications an attractive alternative to terrestrial communications systems, particularly in lesser developed countries. On this second point, while progress has been made, it should be made clear that commercial satellite companies will require access to markets that are not currently open to outside competition.

Additional findings should include an unambiguous acknowledgment of the importance of market access, competition and transparent regulatory processes in overseas markets. Specifically, I offer the following for your consideration:

1) some private commercial satellite companies must compete against Intelsat and Inmarsat to provide telecommunications services to customers worldwide in a marketplace that makes new entry difficult or impossible;
2) the governmental status of Intelsat and Inmarsat coveys a competitive advantage to those organizations in competition against private commercial satellite companies for access to the markets of Intelsat and Inmarsat signatories;
3) the dominant provider of telecommunications services in many countries often is the sole signatory to Intelsat and Inmarsat. There is thus a normal incentive for the provider to protect its interests by favoring an IGO provider over a non-IGO provider of telecommunications services;
4) the same bias could exist for any Intelsat or Inmarsat affiliate in which a signatory to Intelsat or Inmarsat retains an equity interest; and
5) private commercial satellite companies today have the capabilities to provide an increasing array of services worldwide to an even larger segment of the world's population. In a competitive marketplace, Intelsat and Inmarsat can only justify their existence by competing on a commercial level as private entities.

However instructive or informative congressional findings might be, findings alone do not cure the monopoly structure now in place for Intelsat and Inmarsat. Creating a pathway towards privatization requires time-lines for achieving privatization and consequences for failure to successfully act.

While many would argue that much progress has been made by the U.S. within the organizational structure of Intelsat and Inmarsat, monopolies cannot be expected to voluntarily abandon their markets and gatekeeping positions.

Meaningful legislation will require true privatization that creates open, pro-competitive markets which will attract innovative and competitive telecommunications services. Legislation must establish a direct pathway to privatization with time-lines and meaningful consequences for failure to achieve stated goals. I want to recognize Section 4(b) of S. 2365 that provides that the U.S. should consider withdrawing from participation in Intelsat or Inmarsat should privatization not be achieved by a date certain. While other incentives might also be employed such as withholding licensure to provide non-core services in the U.S. market until privatization has been accomplished, this provision is a step in the right direction. I would argue, however, that setting a goal for privatization of January 1, 2003 unduly slows down a process that should by now be viewed as inevitable and further disadvantages commercial satellite competitors who require access to markets immediately. On this point I would reference a *Washington Post* article earlier this year that reveals that Mr. Conny Kullman , Intelsat's new Director General, aims to privatize Intelsat by the year 2001. The utility of legislation should be to provide incentives for greater discipline; therefore, let us re-enforce Mr. Kullman's goals by providing legislation that will put Congress squarely on his side. I would also argue that realization of privatization will require a more defined pathway, with appropriate competition tests for Intelsat and Inmarsat and criteria for defining truly independent affiliates.

An appropriate pathway towards privatization should include the following elements:

1) a realistic yet tight time-line for privatization of Intelsat and Inmarsat;
2) conversion to a national stock corporation with ownership interests that are independent of Intelsat and Inmarsat signatories;
3) independence of successor entities and affiliates;

4) fair appraisal of assets transferred to affiliates;

5) reallocation of orbital slots; and

6) a standstill of new services offered through an affiliate until privatization is realized.

Furthermore, legislation must set forth a clear definition of independence for Intelsat and Inmarsat affiliates providing competitive, non-core satellite communications services. To this end -

1) affiliate structures must prevent anti-competitive practices such as cross subsidization and common marketing;

2) affiliates must operate in an arms-length relationship with Intelsat or Inmarsat, including fair market valuation of all permissible business transactions and purchases;

3) affiliates must not be under the control or direction of Intelsat or Inmarsat or any party or signatory to either organization or materially influenced by the ownership interests of these parties or signatories; and

4) affiliates must not benefit directly or indirectly from the privileges and immunities enjoyed by Intelsat and Inmarsat or have orbital locations or spectrum registered or coordinated by Intelsat or Inmarsat.

Creating a level playing field will also mean assuring that <u>all</u> affiliates meet a realistic commercial test of privatization. There should be no sweetheart deals and no free lunches. To this end, Section 4(b)(3) of the bill that appears to grandfather existing affiliates undermines the entire thrust of this effort. Furthermore, the proposed new Section 603(2) of the Communications Satellite Act of 1962 would inappropriately treat as common carriers mobile satellite systems that intend to act as wholesale providers of satellite communications services.

I would like to conclude by re-asserting the importance of timing in market access. Just as discriminatory licensing regulations forced Ellipso to face a two and one-half year delay in accessing the financial markets on an equal footing with others, extending the day of true

privatization for Intelsat and Inmarsat will disadvantage U.S. commercial satellite companies in the global marketplace. Congress should determine the course and test for privatization.